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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

13

Application Number 10/729,330

Filing Date 12/04/2003

First Named Inventor Cameron A. Riddell

Art Unit 3643

Examiner Name Kurt Rowan

Attorney Docket Number 999205-100025

**ENCLOSURES (Check all that apply)**☐ Fee Transmittal Form☐ Fee Attached☐ Amendment/Reply☐ After Final☐ Affidavits/declaration(s)☐ Extension of Time Request☐ Express Abandonment Request☐ Information Disclosure Statement☐ Certified Copy of Priority Document(s)☐ Reply to Missing Parts/  
Incomplete Application☐ Reply to Missing Parts  
under 37 CFR 1.52 or 1.53☐ Drawing(s)☐ Licensing-related Papers☐ Petition☐ Petition to Convert to a  
Provisional Application☐ Power of Attorney, Revocation☐ Change of Correspondence Address☐ Terminal Disclaimer☐ Request for Refund☐ CD, Number of CD(s) \_\_\_\_\_☐ Landscape Table on CD☐ After Allowance Communication to TC☐ Appeal Communication to Board  
of Appeals and Interferences☐ Appeal Communication to TC  
(Appeal Notice, Brief, Reply Brief)☐ Proprietary Information☐ Status Letter☒ Other Enclosure(s) (please identify  
below):Written Statement of 2/7/07 Telephone  
Interview and Request for Reconsideration of  
Office Action;  
Acknowledgement of Receipt Postcard

Remarks

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name

JONES DAY

Signature

Printed name

Robert W. Dickerson

Date

February 12, 2007

Reg. No.

29,914

**CERTIFICATE OF TRANSMISSION/MAILING**

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Signature

Typed or printed name

Jennifer Tai

Date

February 12, 2007

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Patent  
999205-100025

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No.: 10/729,330 )  
Applicant: Cameron A. Riddell )  
Filed: 12/04/2003 )  
TC/A.U.: 3643 )  
Examiner: Rowan, Kurt C. )  
Docket No. 999205-100025 )  
Customer No. 34026 )

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**WRITTEN STATEMENT OF 2/7/07 TELEPHONE INTERVIEW  
and  
REQUEST FOR RECONSIDERATION OF OFFICE ACTION**

Sir:

This document contains the following:

**Written Statement of Substance of the February 7, 2007 Telephone Interview with the Examiner:** on page 2.

**Request for Reconsideration of Office Action:** begins on page 3

**Statement of the Claims:** are reflected in the listing of claims which begins on page 10.

## **I. Written Statement of Substance of Applicant-Initiated Telephone Interview**

Applicant and his attorney thank Examiner Rowan for granting the telephone interview which was conducted during regular business hours on February 7, 2007.

Applicant presents the following written statement of the substance of the interview pursuant to MPEP § 713.04:

Persons participating in the interview: Examiner Kurt Rowan and Robert W. Dickerson, attorney for applicant.

Type of interview: telephone.

Exhibits shown and demonstration presented: During the telephone conference, photographs previously filed were referenced and discussed: photographs of an Ecopic product and of two Bird B Gone products. The Ecopic product is that shown in U.S. Patent No. 6,006,698. The two Bird B Gone products (called by it respectively "Flat Track" and "Shock Track") that were referenced and discussed are also shown in the 02/07/2007 email from Robert W. Dickerson to Examiner Rowan, a copy of which is attached and incorporated herein by reference.

Claim(s) discussed: pending claim 1.

Specific prior art discussed: The prior art listed in the IDS filed on November 13, 2006 in this matter. Substance of the discussion reiterated below in the Request for Reconsideration.

Agreement reached: none.

## **II. Request for Reconsideration**

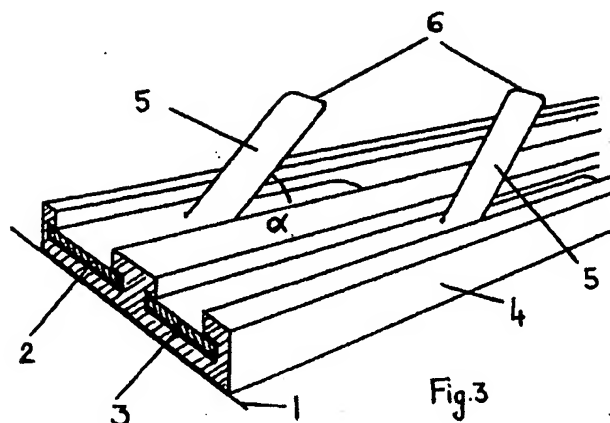
Applicant respectfully requests reconsideration of the last Office Action (mailed 06/16/06), in further consideration of the additional prior art cited in the 11/13/2006 IDS and the following remarks.

The claimed invention is a pest deterrent device that includes at least two braided conductive element that are sewn to a non-conductive base such that when the base is bent in either convex or concave fashion, at least a portion of the stress is absorbed by the individual strands in the braided conductive elements expanding apart from, or contracting towards, one another.

This type device, which will find primary utility as a bird deterrent device, fulfills a long felt need for an effective electric deterrent that can be attached to other than flat surfaces, and when attached can more effectively withstand the rigors of the weather, differing coefficients of expansion between the base and the conductive elements, and other hazards, such as being stepped on or crushed by, for example, window washers and their equipment. Creating such a flat, flexible, effective deterrent device that will allow it to be attached to radically curved surfaces without breaking down, that will stand up to abuse by window washers, that keeps in the conductive elements in place, and at the same time, keeps the conductive elements properly exposed to the bird or pest to be deterred such that incidental contact will with both elements thus generating the electric shock, has proven elusive.

This is graphically and conclusively shown by the prior Ecopic and Bird B Gone "Shock Track" devices referenced above, both of which sought to create such a flexible electric deterrent device.

The Ecopic device is also that shown in USP 6,006,698, depicted here:

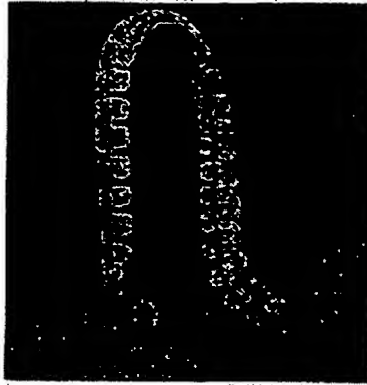


As seen here, the Ecopic device has solid metal strips 2 and 3 as the conductive elements housed within C-channels formed in the flat base 4. Because the electric conductive strips are housed below the surface of the top of the base, however, the Ecopic device had to go to the trouble of creating bent tabs 5 all along the length of each strip so that the bird (or other pest) may actually come into contact with both strips at the same time to receive the electric shock.

Because the strips 2 and 3 are solid, when the base/strip combination in the Ecopic device is bent, there is no “give” in the strip, so it slips within the channel (for example, if the base is curved convexly, the strips will pull inwardly, away from the ends of the base, making attachment of adjacent ends more difficult).

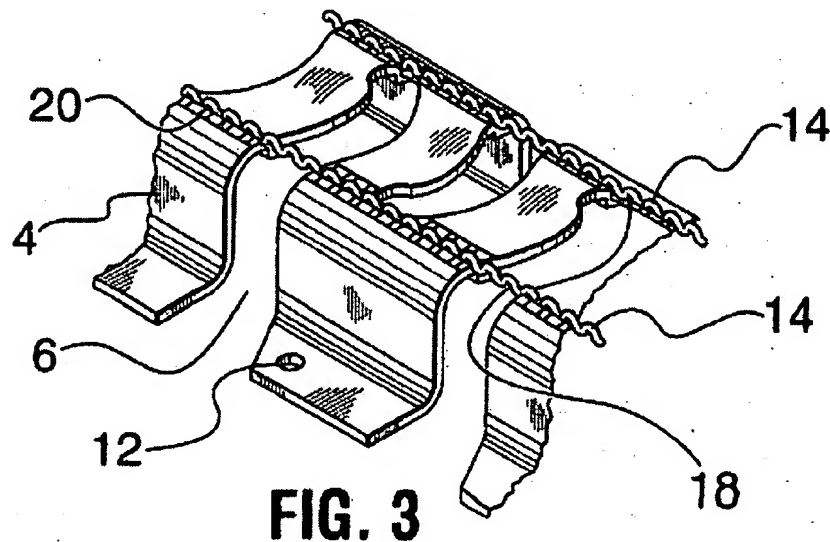
These features limit its effectiveness.

Bird B Gone’s flexible electric deterrent product (that is, before it saw and copied the invention here) was its “Shock Track” device, shown here in a picture copied from the Bird B Gone website:



**Bends in Any Direction!**

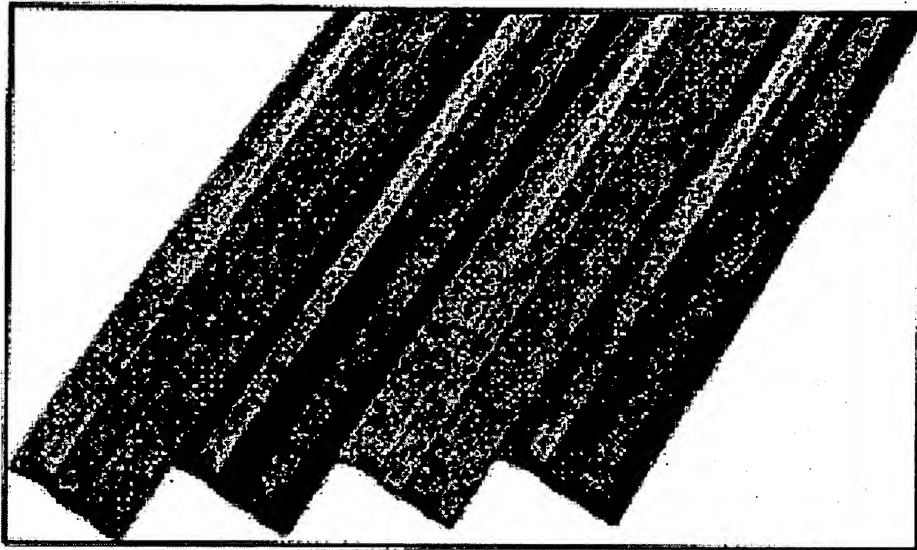
That device is also the subject of USP 6,283,064, Figure 3 of which is depicted here:



This device uses metal strips 14 that are attached to a plastic base 4. The base has a number of gaps 6 and thus is articulated so as to allow it to be bent for attachment to non-flat surfaces. The wires 14 are “crimped in undulating fashion along their length, to provide them with give so that they will not disassociate from the base when it is bent or when the wires and base expand or contract at a different rate.” (’064 patent, claim 1). And this device attaches the wires to the base “by a plurality of jaw like clips formed integrally with the strip along its upper

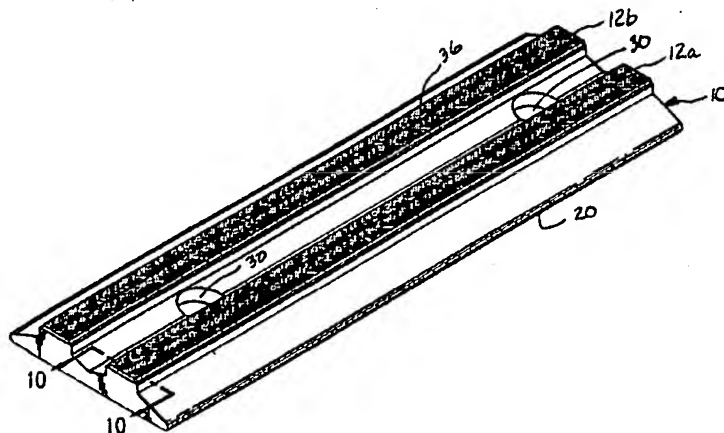
surface, the clips positioned to grip and secure the wires at low points on the undulations of the wires.” (*Id.*, claim 3).

Once Bird B Gone saw the product of the instant invention, however, here is the product it introduced (shown in a photograph copied from the Bird B Gone website):



**Available in Grey, Black,  
Stone & Terra Cotta**

As is immediately seen, this is direct copy of the invention claimed here, as shown in this Figure from the pending application:



Imitation is not only the truest form of flattery, here it is also strong objective indicia of non-obviousness of the claimed invention.

Thus, the Ecopic and two Bird B Gone products graphically depict need, efforts, and then copying by others, all of which provided incredibly strong objective indicia of non-obviousness.

Given Bird B Gone's desire to continue to market its knock-off product, it is not surprising that it counsel would submit prior art to applicant's attorney (once Bird B Gone's attorney considered the patent close to issue) in effort at least to delay issuance of the patent. (See copy of email previously filed).

As discussed with the Examiner during the telephone interview, none of the newly-cited prior art comes even close to being a Section 102 anticipation. Thus, the only issue is whether the prior art suggests the patented combination, and suggests combining the elements in the way now claimed. As to much of the prior art, they are not deterrent devices, are not even in the same class, and there is thus a question whether they are even sufficiently related to the claimed invention to be considered analogous art. Regardless, even if they are, they plainly do not teach or suggest the claimed combination, and do not come even within shouting distance of overcoming the very strong, objective indicia of non-obviousness discussed above.

In short summary:

Rapisarda, USP 5,366,780 is not a deterrent device, not in the same class, and does not show or suggest a braided electric element that expands and contracts when the base to which they are attached is flexed (hereinafter referred to as the "flex aspect").

McKelvy, USP 6,477,027 is not a deterrent device, not in the same class, and does not show or suggest the flex aspect.



Olsson, USP 4,494,733 is somewhat analogous to a deterrent device (sort of the flip side of the coin) in that it is a enclosure for animals design to keep farm animals in as opposed to keeping pests away. It does not show sewing, a braided conductive element (rather, a woven tape which includes electric wires) or the flex aspect.

Moutauschek, USP 5,049,704 is not a deterrent device, not in the same class, does not show a braid, and does not show the flex aspect, among other claimed elements.

Bellon, Publication No. US 2001/0015426, is another electric fence type device that uses a tape, and doesn't have a base, a braided element, or the flex aspect, among other claimed elements.

Clark, USP 5,158,039, is not a pest deterrent device, is not in the same class, and instead discloses what is in essence a pair of electrified leggings that has no braided element and no flex aspect.

Standing, USP 4,861,645, is yet another fence tape with electrically conducting wire, not in the same class, that doesn't have braided elements or the flex aspect.

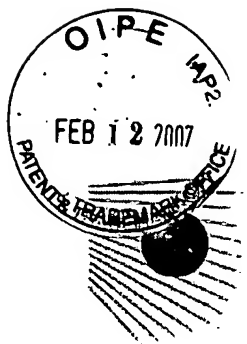
Antonevich, USP 4,475,141, is not a deterrent device, is not in the same class, and instead depicts a grounding tether that doesn't have a braided elements or the flex aspect.

Wildshut, Pub. No. US 2002/0066895 is yet another electric fence tape or rope, etc., which doesn't have a sewn-to-a-base braided element, and doesn't have the flex aspect.

Mahan, USP 5,107,620, shows an electrified table cloth that doesn't show a sewn-to-a-base braided element, and doesn't have the flex aspect. The "suitable means" for attaching the metallic strips to the table cloth are listed as adhesive, glue or a suitable bonding agent. (3:42-44).

Negre, USP 6,006,698 is the Ecopic device discussed above. It doesn't have a sewn-to-a-base braided element, and doesn't have the flex aspect. It is, however, considered by applicant to be the closest prior art shown of all of these discussed here.

No combination of the prior art shows or suggests a pest deterrent device having sewn-to-a-base braided elements and the flex aspect. Because so many of these are not deterrent devices and in different classes, there is no showing of any suggestion that any of the teaching would have been combined. And again, the strong objective indicia of non-obvious discussed above confirms that the following claims are non-obvious over the prior art



Robert W  
Dickerson/JonesDay  
Extension 32407

02/07/2007 10:24 AM

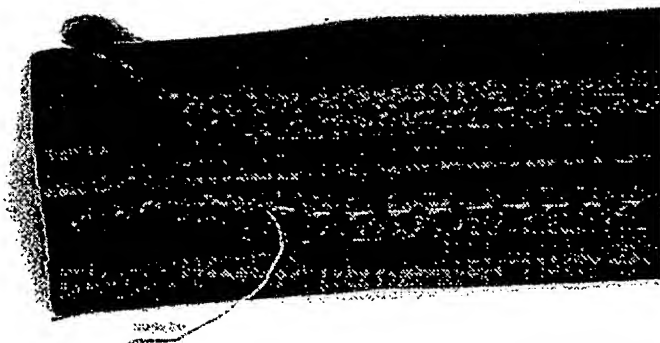
To kurt.rowan@uspto.gov

cc

bcc

Subject Fw: 2 pm telcon today

Dear Examiner Rowan: Also for our telcon today, I will want to discuss with you the product shown here, which is the knock-off product recently introduced by Bird B Gone, after they saw the invention that is the subject of the pending application. Prior to their introduction of this knock-off product, their attempts to market and sell an electric pest deterrent device that would be sufficiently flexible to be useable with non-flat surfaces is the product shown in my earlier email to you (set forth below). These clearly show unsuccessful attempts, and then copying, by others -- both very strong indicia of non-obviousness.



Robert W. Dickerson, Esq.  
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— Forwarded by Robert W Dickerson/JonesDay on 02/07/2007 10:16 AM —



Robert W  
Dickerson/JonesDay  
Extension 32407

02/07/2007 09:30 AM

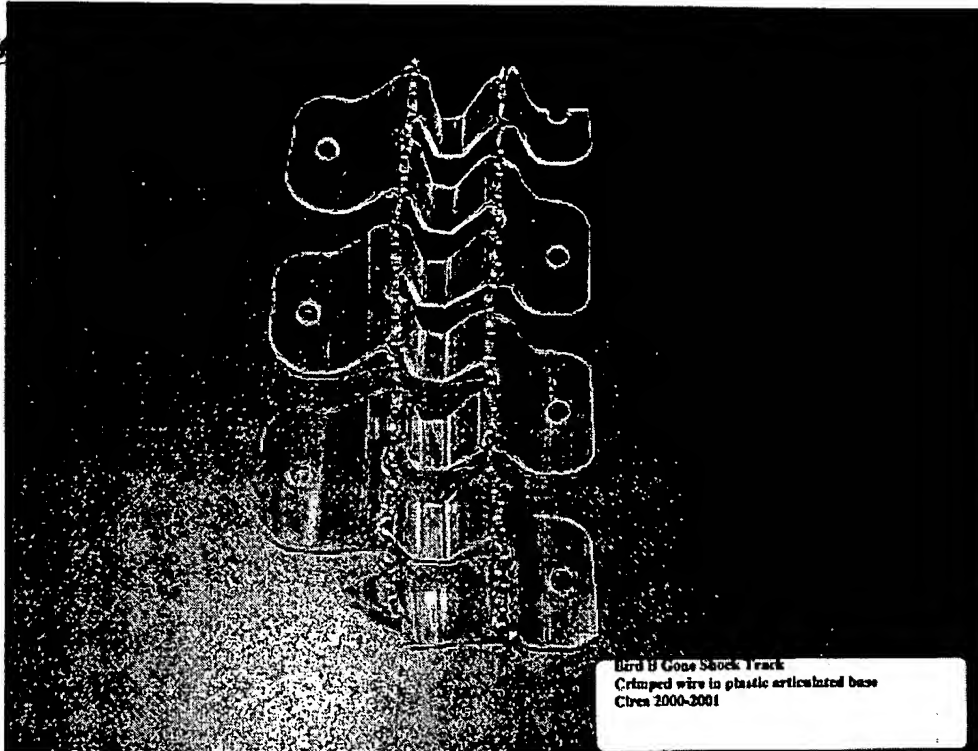
To kurt.rowan@uspto.gov

cc

Subject 2 pm telcon today

Dear Examiner Rowan: during our telcon today at 2:00 pm your time, I will want to direct your attention to a particular piece of prior art that we've already discussed, but just so you will have convenient reference to it, I've enclosed a copy of the photograph that we showed you before:

BEST AVAILABLE COPY



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